

Chapters in the Legislative History of Land Distribution

by Elizabeth Cable Brook

June, 1913

Submitted to the Department of History of the
University of Kansas in partial fulfillment of the
requirements for the Degree of Master of Arts

CHAPTERS IN THE LEGISLATIVE HISTORY
OF LAND DISTRIBUTION.

By

Elizabeth Cable Brook.

1913

1913

CHAPTERS IN THE LEGISLATIVE HISTORY OF LAND DISTRIBUTION.

A thesis submitted to the Department of History of
the University of Kansas in partial fulfillment of
the requirements for the degree of Master of Arts.

--- By ---

Elizabeth Cable Prook.

June, 1913.

Approved
W. D. Braden
June 2, 1913.

ORIGIN OF THE DISTRIBUTION BILL.

Origin of the Distribution Bill.

-----oOo-----

From the time of the Confederation the public lands have played an important part in American history. The federal government early adopted the policy of selling the lands rather than devoting them to individuals. It was possible to consider the lands a source of revenue and dispose of them by sale without much opposition as long as the federal government was in debt. But in the late twenties and early thirties when it was evident that the public debt of the United states would soon be paid, agitation in favor of abandoning them as a source of revenue broke out in the South and West. Schemes for graduating the price in proportion to the length of time the land had been on the market, for enacting prospective pre-emption laws with a reduction of price to the actual settlers and even for acceding the entire public domain to the various western states in which they were situated were brought forward and supported with a good deal of

vigor. In opposition to this, the Eastern States as a manufacturing section wished to prevent the reduction of the price of land, fearing that they would be drained of their cheap labor supply by emigration to the new states.

In 1832 Clay was nominated for the Presidency. As an ardent protectionist, he was supposed to support the views of the manufacturing states. His enemies thought if he could be compelled to come out openly in advocacy of their theory it would cost him the support of the Southwest and consequently the Presidency. They determined to force the consideration of the question upon the Committee of Manufactures of which Clay was perhaps the most important member, although Mahlon Dickerson of New Jersey was its chairman. Accordingly, the 22d of March, 1832, during the discussion of the tariff, Bibb of Kentucky, Clay's own colleague, moved that the committee on manufactures be instructed to inquire into the propriety of reducing the price of public lands.(1) Not content with this, Robinson of Illinois moved to further instruct the committee to inquire into the expediency of transferring the lands on reasonable terms to the States in which they lie.(2) Benton seconded the motion, saying, "a future plan of revenue is now to be settled

upon and in settlement of that plan, a preliminary question, as to the disposition of the public lands, forces itself upon the mind of every statesman and of every citizen of the West. The committee on manufactures has collected into its hands all the subjects of public revenue except the lands and insisted upon their considering that too."(3) The committee on manufactures of course protested against the unjustness of the reference and asserted their unpreparedness for the task. Even some of those who favored reduction of the price of land and who seem not to have been taken into the scheme or to have understood that its entire purpose was to embarrass Clay, protested against the reference. Buckner of Missouri said, that he was opposed to sending the subject before the committee on manufactures, that every man on the committee was unfavorable to the interests of the West, that he did not think the committee would even report, made a plea for the reduction of price and closed by urging that a resolution be passed introducing the proper committee to reduce the price of lands or cede them to the States and then ask Congress to adopt it.(4) This forced Benton to disclose the true reason for the reference, he began by calling attention to the fact

that Clay had been a representative from one of the Western States for a quarter of a century; he continued, "The west has a powerful representation on the committee; whatever is done, she is entitled to know why and wherefore. If a reduction in revenue is to be made, land is entitled to a place. I wish to bring all the facts to light and show everything as it really is".)5) Bibb's motion carried by a vote of 26 to 20.(6)

The 16th of April, Clay submitted the report of the committee on manufactures.(7) He had acted as his enemies had hoped in one respect, in that he came out in opposition to reduction in price, but had prepared a means of keeping the support of all sections, the Southwest included. For, although he advised retaining the old price of land, which would please the East, preventing any acceleration of emigration, he advised distributing the proceeds of the sales among the States according to their federal representation, which would also please the protectionists, as it would compel the federal government to rely on revenue from import duties; and for the new States he prepared an extra "bait" in the form of an additional 10% of the proceeds. The uses to which the States might put this money were stipulated: viz., ed-

ucation, internal improvement and colonization of free negroes. These propositions were drawn up in a bill and supported by a carefully prepared report. The Report begins with a preliminary statement of the reluctance of the Committee to consider the question and a survey of the situation of the land question as based upon the Secretary of Treasury's report of 1831. Then it shows that, while the public domain has been derived from the two sources of cession and of purchase from foreign countries, it is all bound to be held as a source of revenue for the common benefit of all the states. That ceded being bound by the express stipulation of the deeds of cession from these states, and that by purchase bound by the fact that it was purchased by common treasure of all the States. The remainder of the Report is devoted to the discussion of two points referred to the Committee: first, the expediency of reducing the price of land which it disproves, saying further reduction of price is not required since the present price is a fair price, does not retard injuriously the settlement and population of the new States and territories, points out the injurious effects of a reduction on the people of the states where the land is located, in that it would reduce the value of their real

estate, would diminish the interest of those people in the public domain as a common fund and would excite and stimulate speculation; gives a clever reason for giving the new States 10% in addition to their normal share by saying this is to atone to them for the fact that the United States land is untaxed. Second, the expediency of ceding to the States; it points out that the present value of the lands to be ceded is \$1,363,589,691 at the present price; says that the only justification for surrendering them to States would be a defect in general government which prevented proper administration of the public domain which it denies. Further asserts that no branch of the public service has given better satisfaction. The Report closes with a table showing what each of the States would receive if the bill passed. Clay immediately proposed that 3,000 extra copies be printed which Chambers of Maryland moved to increase to 5,000.(8) The opposition now saw that their deeply laid scheme had fallen through, that, whereas they had hoped to win Clay in the Southwest, if their report should be printed and circulated freely in that section, it would act as a most valuable campaign document in his favor. Since there was no minority report, they were forced to refer the whole matter to the

public land's committee in order that "an antidote to the poison of this report might accompany it to the new States".

(9) They agreed to the motion to print 5,000 copies 26 to 19.(10) Finally, on the 9th of May, the motion to refer to the public land committee was tied 22 to 22 and Calhoun, the vice President, gave the casting vote in favor of it.(11)

The 18th of May, King of Alabama, the chairman, reported (12) condemning the bill reported by the committee on manufactures and proposing an amendment to the tariff bill, providing for a reduction of price to one dollar per acre, and to fifty cents per acre on such lands as had been on the market 5 years and proposed to strike out all the distribution bill except the clause granting 10% to the new States which it was proposed to increase to 15%, being determined to make a larger bid for popularity with the new States than Clay had done; asserted that Clay's report was erroneous both in principle and detail, which they attempt to prove with infinite headings and sub-headings; asserted that the new states had to participate in the proposed reduction in revenue, that "the extinction of the federal title within their limits is necessary to their independence and equality with the other states, to the development of their resources; to

the subjection of their soil to taxation, cultivation, and settlement, and proper enjoyment of their jurisdiction and sovereignty". The report also pointed out how advantageous it would be to the federal government to be relieved of the expense of administering the public lands.

The debate began on the 20th of June, with a speech by Clay in defense of his proposition, (13) showing that the Union had an incontestible right to the public land, that it was inexpedient to reduce the price of land, that the revenue was not needed by the general government, while it was needed by the states, and that there should be mutual assistance between the general government and the States, that Congress was authorized to do anything they saw fit with the lands in accordance with their general powers over the property of the United States. Benton and Robinson made the principal speeches in opposition. Benton's was in his usual rabid manner, developing two points: that the bill was in reality a protectionist's measure, "intended to create a vacuum in the treasury to be filled by duties on imported goods", and that it was class legislation in favor of the East, "by keeping up the price of land to prevent emigration of the laboring class to new states".(14) Robinson developed the

argument of its inequality on the slave and non slave-holding states, the slave-holding getting as much for three slaves as the non slave-holding states for five citizens.(15)

Ewing, on June 28th, made a short speech in refutation of the report of the committee on public lands.(16) Pointing out its inconsistency thus: "It proposes, it is true, that the present system of sales be preserved; that the United States still retain the care and superintendence of the property; and the price only be reduced; but the whole body of the report itself, its assumed facts and strained deductions, all tend to a different result - an abandonment of the lands to the States in which they lie, or their gifts to such of them as are willing to receive them".

On the third day of July Clay's distribution bill came to a vote having been amended so as to make the additional portion to the new States 12 $\frac{1}{2}$ and provision for the donation of 600,000 acres to Mississippi, Louisiana and Missouri. The vote was 26 to 18 (17) in its favor.-

10 states, Pennsylvania, New Jersey, Ohio, Connecticut, Maine, Rhode Island, Delaware, Vermont, Massachusetts, Louisiana, cast votes for it - While New Hampshire, Maryland, Kentucky, Indiana, New York and Mississippi cast one each in its favor - which shows that its principal support

was in the East, the Louisiana Senators voting with them as protectionists.(18) The one vote from Mississippi is explained by the fact that the amendment to donate 600,000 acres to three states was introduced by Poindexter and may have been the price of his adherence. The one vote from Kentucky was Clay's, and of course is also protectionist in principle and the other single votes are perhaps explained by personal opposition to Jackson and adherence to Clay.

The same day the bill was taken up in the House and they refused to consider it by agreeing to its postponement to the first Monday in December next by vote of 91 to 88. (19) So for the present it was lost. But the distribution of the proceeds of public lands thus so accidentally thrust upon him, became one of Clay's pet measures and he advocated it in season and out of season from this time until 1841 when he succeeded in getting it passed.

- (1) Register of Debates in Congress, 22d Cong. 1 Sess:623
- (2) Id.: 825.
- (3) Id.: 626.
- (4) Id.: 630.
- (5) Id.: 634.
- (6) Id.: 638.
- (7) Report is printed in full in appendix to Register
22d Cong. 1 Sess. pp.112-118.
- (8) Register of Debates in Congress, 22d 1 Sess.:787.
- (9) Id.: 787.
- (10) Id.: 791.
- (11) Id.: 907.
- (12) Id. Appendix, pp.118-126
- (13) Id.: 1096-1119.
- (14) Id.; 1151.
- (15) Id.: 1170.
- (16) Id.: 1142.
- (17) Id.: 1174.
- (18) Niles's Register of Sept. 3, 1831, prints a memorial
of Louisiana against the repeal of the duties on
brown sugars.
- (19) Register of Debates in Congress, 22d Cong. 1 Sess.:3852.

THE DISTRIBUTION BILL AND THE COMPROMISE OF 1833.

The Distribution Bill and the Compromise of 1833.

-----oOo-----

The crisis in the tariff controversy came in 1832. With the passage of the Tariff Act of that year, the Southern leaders saw that the federal government was determined upon protection as a permanent policy. (1) They had no intention of calmly accepting such an adjustment of the question. South Carolina, relying on the Doctrine of States Rights, issued her famous Ordinance of Nullification which declared the tariff to be null and void and asserted that if necessary force would be used to resist the execution of the law. At the same time the legislature issued an address to the people of the other states, which offered a basis for conciliation by conceding its willingness to agree to a revenue tariff adjusted to the exact expenses of the government, with a substantially uniform rate on protected articles. (2) The Ordinance was issued in October of 1832, and the Congress which assembled in December was confronted with the question of how the nullifying state should be treated.

As to the attitude of President Jackson, there was no doubt. The nullifiers had originally hoped to win him to their side, but as early as April, 1830, he had made it perfectly clear that he was not one of them. At a banquet given on Jefferson's birthday, when nullification toasts were the order of the day, Jackson had declared in no unmistakable terms: "Our Federal Union, it must be preserved". Now that nullification had been declared he warned South Carolina that her action was perilously akin to treason and that as executive, he had no choice but to execute the laws. Furthermore, he appealed to Congress for additional power to deal with the State, asking that he be allowed to move the custom houses to any place on land or aboard ship and to employ the military force of the Union to enforce collection of the duties. The administration party in Congress of course favored this plan, as did the strict nationalists like Webster. But besides the administration party, which by no means had a majority, there were Calhoun's followers, determined upon maintaining States Rights and forcing a review of the tariff with the adoption of a revenue standard, and the protectionists under the leadership of Clay, who was desirous of saving as

much of the protective principle as possible. The compromise of 1833 was the outcome of Clay's efforts to bring these three antagonistic parties together.

Most writers (3) have assumed that the compromise consisted of two parts only: on the one hand, a reduction of the tariff in which a gradual reduction of duties was to take place until 1842, when the horizontal level of 20% was to be reached; and, on the other, the passage of a bill to enforce the collection of duties. This explanation of the compromise overlooks the significant relation which the Land Distribution Bill bore to the tariff measure. It was evidently a part of the compromise, the administration party being induced to support the tariff by the agreement that the Force bill should pass, while Clay expected to receive his reward not only in the postponed tariff reduction but in the distribution of proceeds of public land sales.

The land bill provided for distribution of 12½% of the total receipts from sale of public lands among the seven western states in which they were situated and a distribution of the remainder among the twenty-four states then composing the Union, in proportion to

their federal representation. This was in the interest of the tariff, being intended as Benton asserted: "To create a vacuum in the treasury to be filled by duties on imported goods", (4) and as such it found an ardent advocate in "The Father of Protection". Clay probably would not have thought of preparing the distribution bill for this purpose, if his opponents had not forced the consideration of the land question upon him. In the preceding session of Congress in March, 1832, Bibb moved the reference of the land question to the Committee of Manufactures of which Clay was chairman. The pretended excuse for this reference was the desire to have the tariff and land considered as parts of revenue system, and as such to be adjusted to each other, (5) but the real reason was a desire to embarrass Clay in the pending presidential election, since they thought he would report a solution that would be unacceptable to his adherents in the Western States. (6) Accordingly, Clay prepared the tariff of 1832 and the distribution bill. The Senate passed the distribution bill 26 to 18 (7) but the House refused to consider it. (8) When he advocated it so earnestly in 1833, he may have expected that by the time the final reduction in the tariff took

place, the treasury would be so nearly exhausted that the 20% level could never be established. At any rate he considered it an essential part of the compromise and probably would not have agreed to the enactment of the other two bills if he had known the fate this was to have in the hands of the President.

There are various indications of the connection between these three bills. Their legislative history shows that they passed through Congress pari passu and almost concurrently. The distribution bill had been introduced December 12th(9) and passed January 25th, (10) before the arrangement between Clay and Calhoun (11) had been effected; January 21st, Wilkins of the Committee on the Judiciary reported the "force bill" (12) granting Jackson the power he had requested; this was discussed in the Committee of the Whole until February 20th, when it passed by a vote of 30 to 1;(13) Tyler alone voting against the measure, all the rest who were opposed having withdrawn.(14) In the meantime the arrangement as to the passage of the three bills had been effected and on February 12th, Clay introduced the tariff bill;(15) the 19th, the same day that the "force bill" passed to its third reading, the tariff

was taken up in the Committee of the Whole.(16) Some of the Senators thought the bill as a revenue measure should originate in the House;(22) When Clay saw there was danger of this opposition defeating the bill he persuaded his friend Letcher, a Representative from Kentucky, to get it substituted for the Verplanck tariff bill, an administrative measure which the House had been discussing all session. This was accomplished the 25th of February by a vote of 103 to 71 with 30 members absent.(17) The next day the House passed the bill 119 to 85.(18) February 27th, the House took up the "force bill" after being warned by Wycliffe, another Kentucky Representative, that unless the House passed the "force bill" the Senate would not pass the tariff.(19) Finally the first of March the House passed both the "force bill" and Clay's distribution bill, the former by a vote of 149 to 48(20) and the latter 96 to 40.(21) As soon as this was done the Senate passed the tariff 29 to 16.(22)

Congress had, however, reckoned without the President and although he signed the tariff and the force bills, both of which met with his personal approval, he pocketed the distribution bill. He had declared in

his message at the opening of Congress that the lands were subject to the disposal of Congress, (23) but at the same time pointed out that he thought the price should be reduced and the land sold to actual settlers at a price barely sufficient to reimburse the government for the cost of opening it to settlement. Now, when Congress dared to make another disposition of the land he declared that the pledge to the states who had ceded their lands to the federal government was not satisfied. He based this opinion upon the fact that while the deeds of cession demanded that the proceeds from public lands be expended for the common benefit, this bill gave the seven new states 12% in addition to their share of the remainder. (24) This conduct, if not arbitrary and unconstitutional, as Clay claimed, (25) was at least inconsistent.

Contemporary opinion clearly recognized the relation of these three bills as component parts of one compromise measure. Niles's Register contains several items with respect to them. On February 9th before the bill was introduced, in fact just about the time the agreement was made between Clay and Calhoun and before there had been time for it to become known, Niles pre-

dicts the failure in the House of both Clay's land bill and the force bill "due to lack of time and for other reasons".(26) But, in the issue of March 2d, when the inside history of the bargain had been noised abroad, Niles writes: "The opinion is given out, that the tariff will not pass the Senate unless the bill to further provide for the collection of duties on imports shall pass the House, and if the land bill fails in the House, some also believe that the tariff will hardly pass the Senate.(27) The National Intelligencer of March 4th, asserting that the important business of the session could be summed up in three lines, enumerated these bills which passed pari passu and almost concurrently.(28) The correspondent of the New York American, under the date of March 3d, wrote that "The tariff and land bills both received the final sanction of Congress and when to these is added the enforcing bill we may safely say no day ever saw more done for perpetuating and strengthening of government. By the passage of these bills they have averted a crisis and at the same time declared that the government has a right to enforce its rights".(29) In 1845 Calvin Colton prepared a life of Clay, using Clay's papers and referring his manuscript

to Clay for correction.(30) In this work he asserts that the land bill was a bona fide part of the compromise act and indispensable to make the law fully effective.(21) Again he says: "The understanding of the compromise was broken by the President in withholding the land bill; the provisions of that bill were a part of the understanding- an essential part, without which the compromise could not be fairly sustained toward all parties".(32) This vote of Jackson's was widely denounced. At a public dinner at Roxbury, Massachusetts, in honor of Mr. Dearborn, one of the toasts was, "The Land Bill"- "There is no reliance on the executive though based on terre firma". (39)

The Compromise of 1833 was therefore of three parts: the land bill, which was Clay's share; the force bill, which was Jackson's measure: and the tariff bill, which secured the Southerners' support. By pocketing the land bill, Jackson prevented the adoption of the compromise in its entirety.

- (1) Manifesto of S.C.Members in Congress,
Niles's Register, 42:413.
- (2) State Papers on Nullification, pp 25-31
- (3) Von Holst's Constitutional History of U.S. I:501-503;
Macdonald's Jacksonian Democracy, pp. 163-168;
MacMaster's History of the People of the U.S.,VI:168
Burgess's The Middle Period,(1817-1858) pp.237-238;
Schurz's Clay, II:19; Schouler barely notes the fact
that Clay claimed the land bill as part of the
Compromise, IV:153.
- (4) Register of Debate, 22d Cong. 1 Sess.,p.628.
- (5) Register " " " " " " pp.627-628
- (6) Niles's Register, 43:51.
- (7) Register of Debates, 22d Cong. 1 Sess. p. 1174.
- (8) " " " " " " p. 3858.
- (9) Senate Journal, 22d Cong. 2d Sess. p. 26.
- (10) " " " " " " p.132.
- (11) Private Correspondence of Henry Clay, IV:349.
- (12) Senate Journal, 22d.Cong. 2d Sess. p. 113.
- (13) " " " " " " p. 198.
- (14) John Quincy Adams's Memoirs, VIII:526.
- (15) Senate Journal, 22d Cong. 2d Sess. p. 171.
- (16) " " " " " " p.195.
- (17) John Quincy Adams says: "All machinery representation
united" Memoirs,VIII:527.

- (18) Register of Debates, 22d. Cong. 2d Sess. p. 1816.
- (19) " # " " " " " p. 1818.
- (20) " # " " " " " p. 1903.
- (21) " " " " " " " p. 1920.
- (22) Senate Journal, 22d Cong. 2d Sess, p. 224.
- (23) Richardson's Messages and Papers of the Pres. II:600.
- (24) " " " " " " " III:64
- (25) Register of Debates, 23d Cong, 1 sess. p. 18.
- (26) Niles's Register, 43:385.
- (27) " " 41:1.
- (28) Copied in Niles's Register, 44:18.
- (29) Niles's Register, 44:33.
- (30) Colton's Life and Works of Clay, I:6.
- (31) " " " " " " II:261.
- (32) " " " " " " III:229.
- (33) Niles's Register, 44:99.

THE LEGISLATIVE HISTORY OF THE DISTRIBUTION BILL OF 1841.

The Legislative History of the Distribution Bill of 1841.

-----oOo-----

During the period between 1830-1840, one of the most prominent questions before Congress was that of the public lands. The distribution of the proceeds of the sales among the states had been advocated by Clay and his followers and later became one of the cardinal principles of the Whig party. The Democrats, also, had a solution to offer, and advanced the opposite policy of the reduction of the price of the land to actual settlers, and the enactment of a permanent prospective pre-emption law. As is ordinarily the case, custom had preceded the law, and for some time a "common-law" pre-emptive right had been recognized among the settlers of the public domain.(1) This attitude was no doubt inspired by the retrospective pre-emption laws which Congress had been passing ever since 1801. Up to 1830, the laws had been applicable only to specific cases, but in that year the first general pre-emption law was passed,

and continued from time to time for the next ten years.

(2) In reality, these laws not only overlooked law-breaking, but also held out a premium to encourage it. The inconsistency of such a policy being perfectly obvious, sentiment in favor of a prospective pre-emption law developed rapidly. The Whigs had up to this time refused to agree to a permanent pre-emption law and the Democrats would not permit the passage of a distribution bill, so it seemed impossible to get either adopted.

With the Whig victory in 1840, the chances of distribution brightened. The Whigs, however, determined to make its enactment doubly sure, and to forestall the usual opposition by linking pre-emption to it.(3) May 31st, 1841, the 27th Congress assembled for its first session. The Whigs were in power, having the Executive, a majority of nearly 50 in the House and 7 in the Senate.

(4) During the first week of the session, Clay, as the leader of the Whig party, introduced a program in the form of six resolutions,(5) the principal features of which were the incorporation of a national bank, the contraction of a temporary loan, imposition of necessary duties and a prospective distribution of the proceeds of public lands. By the 22d of June they were ready for distri-

bution and Wm. Cost Johnson of Maryland introduced a bill into the House, entitled "A bill to distribute the proceeds of public lands among the various states and for other purposes".(6) The last clause referred to the provisions with respect to pre-emption. The sections referring to distribution, provided for a distribution of 10% of the net proceeds of the land sales among the nine Western States and for a distribution of the residue among the 26 States, the District of Columbia, the territories of Wisconsin, Iowa and Florida, to be applied as their legislatures might direct. This portion of the bill occupied most of the debate. The arguments advanced in its favor were of various sorts. The intention of the framers of the constitution was cited as proving that public lands should never be employed as a means of providing revenue for the government. "To devote the public domain to such a purpose" was declared "to be not only a violation of the constitution but of the whole spirit and genius of our government".(7) The supporters of the bill found a precedent for distribution in the assumption of the state debts under the leadership of Hamilton, and the setting aside of public lands to liquidate these debts.(8) They pointed out the extensive schemes

of internal improvement the states could carry out with this aid, and what help they could give to education; on the other hand, they showed how inevitable the levying of a direct tax by the state government would be if the bill failed.(9) The opponents of the bill declared it unconstitutional, unequal and inexpedient. Unconstitutional, because, since the constitution made no distinction as to the moneys in the treasury, it was, therefore, impossible to appropriate the revenue from public lands alone.(10) Unequal, because nine of the states were to receive an additional 10%.(11) And inexpedient, because there was no surplus in the treasury at this time and Congress was considering a loan for \$12,000,000 and an increase in the tariff duties.(12) The Southerners denounced it as a preliminary measure to the violation of the compromise of 1833, which provided that after 1842, the tariff should be reduced to a horizontal level of 20%. Benton declared it was "merely a movement to aid the credit of state stocks, in order to furnish the brokers the means of speculation, a mere scheme to raise the value of certain stocks in the market and make fortunes for the state creditors, bank directors and British capitalists".(14)

The sections of the bill containing pre-emption provided for a prospective pre-emption right to every head of a family, widow, a single man 21 years of age, and a citizen, or an alien who has filed declaration of his intention to become one. The requirements were actual entry upon, erection of a dwelling, and cultivation of the soil. There were two kinds of limitations. First, as to persons, no one should be entitled to more than one pre-emption right; no one who was a proprietor of 320 acres; and no one who should leave his own land to reside upon the public domain. Second, as to land, no unsurveyed land, no land included in any reservation, no land reserved for the support of schools, no land containing salines and mines, no sections of land reserved to the United States alternate to the construction of any canal or other public improvement, no land within incorporated towns, no land selected for a town site, and no land actually selected for purposes of trade, should be subject to entry. The bill was referred to the Committee of the Whole June 24th (15) and debated from this time to July 6th. There was greater divergence of opinion with respect to the pre-emption features. Meriwether of Georgia denounced it as "a system to throw the public

lands into the possession of those with the fleetest heels".(16) In contrast to this, Davis of New York said: "There was no divergence of opinion on the subject of pre-emption, that the popular bearing of the principle commended it to every party".(17) Some members were favorable to the pre-emption and opposed to distribution; while others favored distribution and opposed pre-emption. July 6th, at ten o'clock, the Committee of the Whole reported it to the House. At eleven, the bill was passed 116 yeas to 108 nays.(18) The vote was divided on party lines, only two Democrats voting yea and fourteen Southern Whigs voting nay.

July 7th, the land bill was received by the Senate, and the next day referred to the Committee on Public lands.(19) Four days later, the committee reported it back to the Senate(20) with two amendments: first, "to grant 500,000 acres to each new state that shall hereafter be admitted into the Union, upon the same terms as grants to new states are made"; second, in relation to pre-emption, provided for the repeal of the reservation of the law of 1838 in regard to lands under the "Dancing Rabbit" treaty. This provision was adopted at the instance of a member of the Committee from Missis-

issippi, and was believed to be necessary to give that state the benefit of the act so far as pre-emption was concerned. August 9th, the amendments of the committee were adopted(21) and the discussion of the bill began.

Distribution and pre-emption were, however, not allowed to stand or fall on their own merits. The fate of the land bill had become dependent upon the passage of the bankruptcy bill(22) The majority of the Senate was so small that when Robert J. Walker of Mississippi and a few other Senators made the enactment of a bankrupt bill the price of the passage of the distribution and bank bills, the Whigs had to accede their demands. Early in the session, Clay had succeeded in getting the portion of the President's Message which referred to currency and a suitable fiscal agent referred to a select committee. Before this committee reported, Henderson of Mississippi introduced a bankruptcy bill which, aided by the skillful maneuvering of Walker, his colleague, he was able to keep ahead of the bank bill. July 25th, the bankruptcy bill passed the Senate by a vote of 26 to 23.(24) July 28th, the Senate passed the bank bill also by a vote of 26 to 23(25) and the House

agreed to it August 6th, 128 to 97.(26) The bankruptcy bill was received by the House July 31st, and referred to the Committee of the Whole, without division;(27) but not discussed until August 10th. On August 17th, Underwood of Kentucky, one of Clay's friends, made a motion to lay it on the table, which carried 110 to 97. (28) Benton relates, that Walker, hearing what had been done, hurried to the House and informed them that the distribution bill would not pass unless the bankruptcy bill also passed. Accordingly, the next day, the motion to lay on the table was reconsidered by a vote of 108 to 98,(29) and passed by a vote of 110 to 106,(30) with the amendment that it should not go into effect until February 1st. The bill was immediately sent to the Senate, where they were engaged in an exciting debate upon the distribution bill. White said, he hoped, as well as believed, that the distribution bill would pass, and it would not pass alone, but be accompanied by other measures.(31) Linn of Missouri then burst into a tirade upon the methods by which the bills were being passed. He said, "Every man in the country must be told how the bank bill had been passed, how a national debt was entailed upon the country, how the bankruptcy bill

was forced through, as he now understood it was, by a majority of 5 votes in the other end of the capital, many of the Whig opponents dodging behind the columns; how this land bill was in the progress of being passed, the tricks resorted to to effect its passage".(32) At this instant, the Senate was informed that the bankruptcy bill had passed the House with the amendment. King, who was speaking, and had just said that three weeks ago he had offered the chairman of the land committee to take the vote on engrossment, but, was refused, because they were waiting for the bankruptcy bill: "There it is. That is the bill which was to hurry the distribution bill to its final passage without amendments or debate". When the bankruptcy bill was laid on the table in the House, distribution could not pass the Senate. Now the House had reconsidered. The change was brought about by putting on the screws. The bankruptcy bill could not pass unless distribution did. One part of the bargain was fulfilled; distribution could pass without further delay."(33) Walker now moved to lay the distribution bill on the table, which carried 26 to 21.(34)

The discussion on the distribution bill continued

from this time to August 26th, when it was passed by a vote of 28 to 23;(35) "a strict party vote, only Preston breaking ranks and voting with Democracy".(36) The Senate had stricken out the clause excluding persons who had enjoyed one pre-emption privilege,(37) and added an amendment to cease the distribution whenever the duties on imports exceeded 20%.(38) The 27th of August, a little more than two months after the introduction of the land bill in the House, they were informed that the Senate had passed it with certain amendments. The bill was again referred to the public land committee, and the amendments ordered to be printed.(39) Three days later, the committee reported with the recommendation that the House concur in them.(40) On the motion of Wise of Virginia, an effort was made to refer it to the Committee of the Whole again; but the speaker decided against it.(41) Cave Johnson of Tennessee then moved to lay it on the table, but the motion was lost 85 to 111. The House now concurred in the amendment to the tenth section striking out the exclusion of those who have enjoyed the pre-emption privilege before, and the bill was ordered returned to the Senate.(42)

August 30th, the Senate receded from the amendments with which the House failed to concur.(43) September 4th, the bill was approved by the President and became a law.

Distribution had at last been passed by linking it with pre-emption, and by permitting the passage of a bankruptcy bill. The circumstances under which the distribution bill finally passed were similar to those under which it had first received the sanction of Congress in 1833. In that year, the distribution bill, the "Compromise tariff" and the "force bill" were parts of one compromise and dependent upon each other. In 1841, the passage of the distribution bill and the bank bill were dependent upon the enactment of a bankruptcy bill.

- (1) Niles's Register, 91:23.
27th Cong. 1 Sess, p. 138.
- (2) Sato, History of the Land Question in U.S.
J.H.U. Studies, 4 Series, p. 159.
- (3) This is shown by a statement of Senator Smith of Indiana, in 1840, to the effect that pre-emption, graduation and distribution would have to be bound together in the nature of a compromise in order to secure their passage. Cong.Globe, 26th Cong. 2d Sess. appendix, p.69. Also the statement of a Democrat during the course of the debate on the distribution bill. "True policy is to have land settled by independent freemen. Should never be treated as a source of revenue, pre-emption is put in to scare us out of objection." 27th Cong. 1 Sess. p. 13.
- (4) Benton's Thirty Years View, 2:24.
- (5) Congressional Globe, 27th Cong. 1 Sess. p.22.
- (6) Id: p. 89
- (7) Id: p. 122.
- (8) Id: p. 122.
- (9) Id: p. 126.
- (10) Id: p. 128.
- (11) Id: p. 131
- (12) Id: pp. 138-148.
- (13) Id: p. 128.
- (14) Id: p. 136.
- (15) Id: p. 111.
- (16) Id: p. 131.
- (17) Id. p. 148.
- (18) Id: p. 156.
- (19) Id: p. 162.

- (20) Id: p. 182.
- (21) Id: p. 309.
- (22) Benton's Thirty Years View, 2:229 Seq.
- (24) Congressional Globe, 27th Cong, 1 Sess. p. 246.
- (25) Id: p. 260.
- (26) Id.: p. 303.
- (27) Id.: p. 272.
- (28) Id.: p. 343.
- (29) Id.: p. 349.
- (30) Id.: p. 350.
- (31) Id.: p. 346.
- (32) Id.: p. 348.
- (34) Id.: p. 349.
- (35) Id.: p. 370.
- (36) Benton's Thirty Years View, 2:245.
- (37) Cong. Globe, 27th Cong. 1 Sess., p. 332.
- (38) Act of September 4th, Statutes at Large, 5:454.
- (39) Cong. Globe, 27th Cong, 1 Sess, p. 392.
- (40) Id.: p. 406.
- (41) Id.: p. 406.
- (42) Id.: p. 407.
- (43) Id.: p. 406.

University of Kansas Libraries



3 3838 100549461